

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MANFRED WEUTHEN, MICHAEL ELSNER
and DITMAR KISCHKEL

Appeal No. 2005-0360
Application No. 09/896,853

ON BRIEF

Before KIMLIN, TIMM and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 11-23.

Claim 11 is illustrative:

11. An aqueous laundry detergent composition comprising a hydroxy mixed ether and from about 25 to 75% by weight of water.

The examiner relies upon the following references in the rejections of the appealed claims:

Pruehs et al. (Pruehs)	4,898,621	Feb. 6, 1990
Schmid et al. (Schmid) (German patent)	197 38 866 A1	Mar. 11, 1999

As is readily apparent from illustrative claim 11, appellants' claimed invention is directed to an aqueous laundry detergent composition comprising a hydroxy mixed ether and water in an amount within the recited range of 25 to 75% by weight. According to appellants' specification, "[h]ydroxy mixed ethers (HMEs) are known nonionic surfactants with a nonsymmetrical ether structure and a content of polyalkylene glycols which are obtained, for example, by subjecting olefin epoxides to a ring opening reaction with fatty alcohol polyglycol ethers" (page 2, paragraph four).

Appealed claims 11-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pruehs. Claims 11-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schmid.

Appellants submit at page 2 of the Brief that "[t]he claims stand and fall together." Accordingly, all the appealed claims stand or fall together with claim 11, and we will limit our

consideration to the examiner's separate § 102 rejections of claim 11.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we find that the examiner's § 102 rejections are well founded.

We consider first the examiner's rejection over Pruehs. At the outset, it is significant to observe that claim 11 on appeal defines a composition comprising a hydroxy mixed ether and the recited amount of water. While the claim describes the composition as an aqueous laundry detergent, appellants point to no specific passage in their specification which discloses that the composition must contain anything other than a hydroxy mixed ether and water in order to function as a laundry detergent. The specification discloses that "[t]he preparations according to the invention may of course also contain other auxiliaries and additives typical of liquid detergents such as, for example, builders, polymers, bleaching agents, bleach activators, enzymes, enzyme stabilizers, redeposition inhibitors, optical brighteners, hydrotropes, perfumes, electrolyte salts and the like . . ." (page 14, lines 20-24, emphasis added). Hence, although appellants' laundry detergent may comprise a variety of additives

or auxiliaries, the specification fails to teach that the composition must contain anything other than a hydroxy mixed ether and water to qualify as a laundry detergent. Also, appellants have failed to present the requisite objective evidence, let alone an argument, that a laundry detergent composition necessarily contains something other than a hydroxy mixed ether and water.

Consequently, inasmuch as appellants fail to dispute the examiner's factual determination that Pruehs describes a composition comprising a hydroxy mixed ether and water in an amount within the claimed range, it logically follows that Pruehs describes the claimed aqueous laundry detergent composition within the meaning of § 102. This is so notwithstanding the fact that Pruehs uses the composition as a rinse aid for dishwashing machines. Also, appellants make no argument that the composition of Pruehs cannot function as a laundry detergent.

As for the § 102 rejection over Schmid, the reference expressly teaches that the disclosed composition comprising a hydroxy mixed ether and water can be used for commercial laundries (page 5 of English translation, last sentence; and abstract supplied by the examiner). We do not understand or see

the merit in appellants' argument that "[w]hile the phrase 'home laundry' does appear in the Abstract submitted by the Examiner, it is unclear as to what is meant by this phrase" (page 3 of Brief, paragraph three). Manifestly, the abstract teaches that the composition can be used to clean laundry. Furthermore, by disclosing that the surfactant/water composition can be used as a rinse agent in a dishwasher, as well as in commercial laundries, Schmid provides evidence that the rinse aid composition of Pruehs can also serve as a laundry detergent.

Appellants also maintain that "[n]owhere within the four corners of the Schmid reference is the combination of hydroxy mixed ethers with an **aqueous laundry detergent** disclosed" (id.). However, claim 11 on appeal does not require such a combination of ethers with laundry detergent but, as explained above, defines an aqueous laundry detergent as comprising a hydroxy mixed ether and water.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

Edward C. Kimlin
EDWARD C. KIMLIN)
Administrative Patent Judge)
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Catherine Timm)
CATHERINE TIMM) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
)
Jeffrey T. Smith)
JEFFREY T. SMITH)
Administrative Patent Judge)

ECK:clm

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Cognis Corporation
Patent Department
300 Brookside Avenue
Ambler, PA 19002